

REMARKS

Reconsideration and allowance are respectfully requested.

Claims 26-29 are now pending, with Claim 26 being the sole independent claim.

Rejections Under 35 U.S.C. § 112, 1st Paragraph

Enablement

Claims 26-29 stand rejected under 35 U.S.C. § 112, first paragraph, because the Applicants' specification while being enabling for nucleic acids encoding a SEQ ID NO:18 and constructs and vectors comprising them, allegedly does not reasonably provide enablement for nucleic acids encoding a protein with 90% identity to SEQ ID NO:18 and constructs and vectors comprising them.

Applicants respectfully traverse and incorporate by reference their arguments set forth on pages 13-20 of the Appeal Brief filed on October 3, 2007, for support (see also the Supplemental Appeal Brief filed on February 25, 2008).

The Non-Final Office Action states on page 2, paragraph 4, that "[t]he rejection is modified from the rejection set forth in the Office Action mailed 27 February 2007." Applicants respectfully note that it is unclear from the Non-Final Office Action what the nature of the modification is. Furthermore, Applicants believe that all items stated by the Examiner on pages 2-7 of the Non-Office Action relating to the enablement rejection have been addressed in the Appeal Brief filed on October 3, 2007.

In view of the foregoing, Applicants respectfully request withdrawal of the section 112, first paragraph, enablement rejection of Claims 26-29.

Written Description

Claims 26-29 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Applicants respectfully traverse and incorporate by reference their arguments set forth on pages 4-13 of the Appeal Brief filed on October 3, 2007, for support (see also the Supplemental Appeal Brief filed on February 25, 2008).

In view of the foregoing, Applicants respectfully request withdrawal of the section 112, first paragraph, written description rejection of Claims 26-29.

Rejections Under 35 U.S.C. § 103

Claims 26-29 were rejected under 35 U.S.C. § 103(a) as being obvious over Sullivan et al. (1991, Plant Cell 3:1337-1348) in view of Li et al. (1992, J. Biol. Chem. 267:18999-19004). Applicants respectfully traverse these rejections.

Sullivan et al. discloses maize brittle-1 protein (SEQ ID NO:21 of the instant specification; NCBI GI NO. 231654). Attention is kindly invited to claim 26 and Appendix A hereto which shows the percent identity using the Clustal V alignment method with the default parameters between SEQ ID:18 and SEQ ID NO:21. Appendix A reveals that SEQ ID NOs: 18 and 21 only share 57.3% identity, indicating that Sullivan et al. does not teach the claimed invention. Also, attention is kindly invited to page 10, first paragraph, of the Non-Final Office Action where the Examiner stated that "Sullivan et al do not teach nucleic acids that encoding [sic] brittle-1 proteins with 90% or 95% identity to SEQ ID NO:18," thereby confirming that Sullivan et al. does not teach the claimed invention.

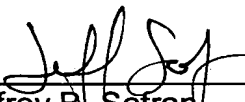
To support this missing disclosure, the Non-Final Office Action, on page 10, second paragraph, refers to Li et al. and suggests that one of ordinary skill in the art would have been motivated to isolate the wheat homolog to increase the repertoire of transit peptides. The availability of transit peptides in plants such as wheat are well known in the art (see, e.g., Smith, S.M et al. 1983. Nucleic Acids Res. 11(24):8719-34, attached herewith and cited in a Supplemental IDS). Hence, Applicants believe that the skilled artisan would not be motivated to combine this reference with Sullivan et al. in order to increase the repertoire of transit peptides.

In view of the forgoing, Applicants submit that the teachings of Li et al. in combination with Sullivan et al. do not teach or suggest the claimed invention,, and thus Applicants respectfully request withdrawal of the section 103(a) rejection of Claims 26-29.

Summary

In view of the foregoing amendments and remarks, Applicants submit that this application is in condition for allowance. In order to expedite disposition of this case, the Examiner is invited to contact Applicants' representative at the telephone number below to resolve any remaining issues. Should there be a fee due which is not accounted for, please charge such fee to Deposit Account No. 04-1928 (E.I. du Pont de Nemours and Company).

Respectfully submitted,

By: 
Jeffrey B. Safran
Attorney for Applicants
Reg. No.: 54,689
Telephone: (302) 984-6132
Facsimile: (302) 658-1192

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Appendix A

Percent Identity		Divergence	
1	2	1	2
1	57.3	1	1
2	37.1	2	2

BB1157 SEQ ID NO 18 (wheat brittle-1)

BB1157 SEQ ID NO 21 (maize, NCBI 231654)